



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2010

Mr. Christopher B. Gilbert
Thompson & Horton L.L.P.
711 Louisiana Street, Suite 2100
Houston, Texas 77002-2746

OR2010-13881

Dear Mr. Gilbert:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 395571.

The Houston Independent School District (the "district"), which you represent, received a request for e-mails of a named individual since November of 2008. You claim some of the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by a member of the public. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform us you are withholding e-mail addresses of members of the public pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. We note, however, that you have attempted to redact the work e-mail addresses of government employees. A government employee's work e-mail address is not an e-mail address of a member of the public. *See* Gov't Code § 552.137(a). Therefore, a governmental body may not withhold

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a government employee's work e-mail address pursuant to the previous determination in Open Records Decision No. 684. *See* ORD 684 at 10 (section 552.137(a) not applicable to institutional e-mail address, internet website address, or e-mail address a governmental body provides for use of its officials or employees). Accordingly, the district must release the government employees' work e-mail addresses, which we have marked. *See* Gov't Code §§ 552.301(b), (e)(1)(D), 552.302. We also note the requestor excluded "e-mail addresses of private citizens" from her request. The submitted information contains an e-mail address of a private citizen; therefore, because this e-mail address, which we have marked, is not responsive to the request, the district is not required to release it in response to this request.

You assert some of the submitted information is excepted under section 552.111 of the Government Code, which excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

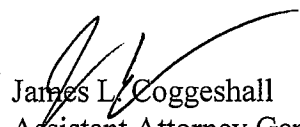
You assert the information at issue in Exhibit A includes "policy discussion and opinions related to improving teacher performance, the promotion and improvement of the District's magnet school program, the re-organization of the HISD Alternative Certification Program (ACP), and the District's ASPIRE program[.]" You also assert the information at issue in Exhibit B pertains to "ongoing policy discussions related to Houston ISD's Minority and

Women Business Enterprise (MWBE) program” and “policy discussions and opinions regarding the qualifications for serving on the District’s Bond Oversight Committee.” Based on your representations and our review, we agree the information we have marked consists of advice, opinion, and recommendations of the district regarding policymaking matters; therefore, the district may withhold the information we have marked under section 552.111 of the Government Code. You have not, however, demonstrated how the remaining information you have highlighted consists of advice, opinions, or recommendations about a policymaking decision; therefore, the district may not withhold the remaining information under section 552.111 of the Government Code. Instead, the district must release the remaining responsive information to the requestor, including the government employees’ work e-mail addresses we have marked.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tp

Ref: ID# 395571

Enc. Submitted documents

c: Requestor
(w/o enclosures)